

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
UNITED STATES DEPARTMENT )  
OF THE NAVY, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 78-28

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$250 civil penalty, arises from the alleged violation of Section 9.03(b) (opacity) of respondent's Regulation I. The hearing was held before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, convened at Seattle, Washington on May 30, 1978. Hearing examiner William A. Harrison presided. Member Chris Smith has read the evidence in the proceeding. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by and through its attorney, Lieutenant W. J. Yund, Jr., Judge Advocate General's Corps, U. S. Navy. Respondent

1 appeared by and through its attorney, Keith D. McGoffin. Olympia  
2 reporter Susan Cookman recorded the proceedings.

3 Having heard the testimony or read the transcript, having reviewed  
4 the exhibits, and being fully advised, the Pollution Control Hearings  
5 Board makes these

## 6 FINDINGS OF FACT

### 7 I

8 Respondent, pursuant to RCW 43.21B.260, has filed with this  
9 Hearings Board a certified copy of its Regulation I containing  
10 respondent's regulations and amendments thereto of which official  
11 notice is taken.

### 12 II

13 This case concerns the Puget Sound Naval Shipyard, a facility of  
14 appellant, U. S. Department of the Navy. On January 6, 1978, there was  
15 an unexpected loss of steam pressure at the Central Power Plant (Boiler  
16 No. 13) shortly after 8:00 a.m. Shortly afterward, about 8:15 a.m.,  
17 steam pressure in the connected West End Plant (Boiler Nos. 108 and 114)  
18 dropped also. Normal pressure at the West End Plant is 160 pounds and  
19 the failure at the Central Power Plant created a steam demand which  
20 reduced West's pressure to 35 pounds. At least 50 pounds pressure is  
21 needed to operate the West End Plant. The operator of the West End Plant,  
22 on duty with one other man, recognized the danger of boiler explosion  
23 which the pressure drop may signal. Both the operator and his  
24 assistant therefore began to take manual corrective action aimed at  
25 recovering pressure and insuring safety.

26 While they were about their task, however, the West End Plant was

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1 emitting black smoke. This was observed at 8:25 a.m. by respondent's  
2 inspector who was on routine patrol outside of the Naval Shipyard. The  
3 appellant caused a black smoke emission of at least nine consecutive  
4 minutes of a shade equivalent to Nos. 2-3.75 on the Ringelmann Chart.  
5 Respondent's inspector issued, by mail, a Notice of Violation which  
6 appellant received four days later. The inspector attempted to telephone  
7 the Naval Shipyard's Environmental Engineer just after observing the  
8 emissions, but the engineer was away from his office on the two occasions  
9 when the inspector called. A Notice and Order of Civil Penalty citing  
10 Section 9.03(b)(1) of respondent's Regulation I and assessing a civil  
11 penalty of \$250 was later issued to appellant. From this, appellant  
12 appeals.

### III

14 While the respondent's inspector was recording his observation, at  
15 approximately 8:30 a.m., the operator of the West End Plant, and his  
16 assistant, succeeded in stopping the pressure drop and began recovering  
17 pressure. At this moment the operator of the West End Plant went to a  
18 telephone and reported the pressure loss and partial recovery to his  
19 foreman. This is the procedure which appellant has directed. The  
20 foreman, however, has responsibility for operating the Central Power  
21 Plant, and he and the others at that location were personally and busily  
22 engaged in recovering pressure in the boilers there. Their actions, also,  
23 were chiefly directed at avoiding an explosion and insuring safety.  
24 When the foreman at Central regained partial pressure, at 8:55 a.m.,  
25 he telephoned the Naval Shipyard's Watch Office and reported the loss  
26 of steam pressure. The Watch Office then telephoned respondent at

27 FINAL FINDINGS OF FACT,  
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1 8:57 a.m., and reported the loss of steam pressure. This, also, is  
2 the procedure which appellant has directed.

3 IV

4 The initial loss of steam pressure at the Central Power Plant may  
5 have been due to malfunction of an "automatic combustion control." This  
6 was added as part of a \$2.7 million power-plant pollution control  
7 project which appellant has carried out at Puget Sound Naval Shipyard  
8 within the last five years.

9 Following the events of this appeal, the appellant has directed  
10 that the operator of the West End Plant is to report breakdowns to a  
11 central dispatcher thereby eliminating the step of first notifying the  
12 foreman at the Central Power Plant.

13 V

14 Any Conclusion of Law which should be deemed a Finding of Fact is  
15 hereby adopted as such.

16 From these Findings, the Pollution Control Hearings Board comes  
17 to these

18 CONCLUSIONS OF LAW

19 I

20 In emitting an air contaminant, smoke, for more than three minutes  
21 in any one hour which contaminant is of a shade darker than that  
22 designated on the Ringelmann Chart as No. 1 (20 percent density),  
23 appellant violated Section 9.03(b) of respondent's Regulation I.

24 II

25 Appellant contends that it should be exculpated from its violation  
26 by Section 9.16 of respondent's Regulation I which states:

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 Emissions exceeding any of the limits established by this  
2 Regulation as a direct result of start-ups, periodic shutdown,  
3 or unavoidable and unforeseeable failure or breakdown, or  
4 unavoidable and unforeseeable upset or breakdown of process  
5 equipment or control apparatus, shall not be deemed in  
6 violation provided the following requirements are met:

7 (1) The owner or operator of such process or equip-  
8 ment shall immediately notify the Agency of such occurrence,  
9 together with the pertinent facts relating thereto regarding  
10 nature of problem as well as time, date, duration and  
11 anticipated influence on emissions from the source.

12 (2) The owner or operator shall, upon the request  
13 of the Control Officer, submit a full report including the  
14 known causes and the preventive measures to be taken to  
15 minimize or eliminate a re-occurrence. (Emphasis added)

16 Section 9.16 excuses what would otherwise be a violation and must there-  
17 fore be strictly construed. "Immediately" means instantly and at once.  
18 In this case, the relay of notice from West End Plant to Central Power  
19 Plant to Watch Office to respondent, beginning with the breakdown at  
20 8:15 a.m. and ending at 8:57 a.m. (42 minutes), did not constitute  
21 immediate notification of the respondent. Appellant therefore cannot  
22 claim the benefit of Section 9.16.

23 This failure to make immediate notification is due to the relay  
24 procedure which appellant established for reporting breakdowns, and is  
25 not the result of dalliance by individual employees.

### 26 III

27 Because of the subsequent action which appellant has taken to  
28 expedite reports of breakdown and because this breakdown was reported  
29 as soon as possible using the relay procedure then in effect, the  
30 civil penalty should be mitigated.

### 31 IV

32 Any Finding of Fact which should be deemed a Conclusion of Law  
33 is hereby adopted as such.

34 FINAL FINDINGS OF FACT,  
35 CONCLUSIONS OF LAW AND ORDER

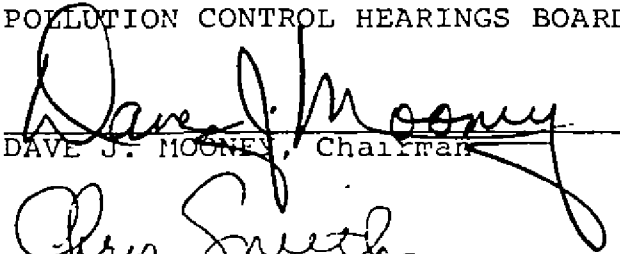
1 From these Conclusions, the Board enters this


2 ORDER

3 The violation is affirmed; provided, however, the \$250 civil penalty  
4 is hereby abated to \$100.

5 DONE at Lacey, Washington, this 27<sup>TH</sup> day of June, 1978.

6 POLLUTION CONTROL HEARINGS BOARD

7   
8 DAVE J. MOONEY, Chairman

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10 CHRIS SMITH, Member

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